BEFORE THE
PUBLIC SERVICE COMMISSION OF
THE STATE OF SOUTH CAROLINA

Petition of Verizon South Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in South Carolina Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	Docket No. 2004-0049-C

REPLY OF VERIZON SOUTH INC.
IN RESPONSE TO ANSWER OF KMC TELECOM, ET AL.

On March 19, 2004, Verizon South Inc. ("Verizon") filed a revised proposed interconnection agreement amendment that reflects the new, more limited unbundling requirements established in the Federal Communications Commission's *Triennial Review Order*. Verizon has suggested that the Commission grant all parties that wish to participate in this proceeding until April 13, 2004, to respond to Verizon's proposed amendment. Nevertheless, a group of CLECs — the "Competitive Carrier Coalition" — filed an answer to Verizon's original petition for arbitration on March 16, 2004, to propose that the Commission ignore the timeline for arbitration that the FCC established in the *Triennial Review Order*.[1] Instead, they propose, the Commission should hold this proceeding in abeyance, require the parties to negotiate anew, and expand the proceeding to address Verizon's obligations "under 271" and "state law."

[1] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "*TRO*"), *vacated in part and remanded, United States Telecom Ass'n v. FCC*, Nos. 00-1012 *et al.*, 2004 WL 374262 (D.C. Cir. Mar. 2, 2004) ("*USTA II*").

The Coalition's proposals are contrary to federal law. First, the FCC has established that state commissions must resolve petitions like Verizon's in accordance with the timelines in Section 252. The Coalition's suggestion that the timeline did not leave adequate time for negotiation is incorrect: Verizon waited for months for the Coalition's members to take the trouble even to respond to Verizon's proposals; if time for substantive negotiations was short, the fault lies with the Coalition's members.

Second, there is no basis for expanding this or any other proceeding to address either Verizon's supposed obligations under section 271 or state law. Obviously, Verizon is not subject to any section 271 obligations in South Carolina in the first place; even if it were, any issues related to Verizon's obligations under that federal provision are matters for the FCC. And because the unbundling requirements — and limitations — contained in the *Triennial Review Order* preempt state law, any such state law matters are irrelevant to Verizon's request for relief.

Accordingly, the Commission should establish a briefing schedule to resolve any remaining disputed issues within the timelines established by the FCC.[2]

ARGUMENT

I. THE FCC HAS ESTABLISHED THAT THE TIMETABLES SET FORTH IN 47 USC § 252 APPLY TO VERIZON'S PETITION

In the *Triennial Review Order*, the Federal Communications Commission established that the timetable set forth in 47 U.S.C. § 252(b) — which applies to arbitration of interconnection agreements under the Communications Act of 1934, as amended ("Act") — also applies to

[2] Verizon understands that ITC^DeltaCom and the Small CLEC Group have also proposed that this proceeding be dismissed or stayed. Verizon has only recently received copies of those filings, which raise arguments essentially identical to those raised by the Coalition. As explained below, and contrary to the claims raised by the Coalition and these other CLECs, the prompt implementation of the new unbundling requirements in the *Triennial Review Order* is a matter of critical importance for development of local competition, and Verizon's petition comports with the procedures that the FCC anticipated.

negotiations over amending interconnection agreements with respect to any of the *Triennial Review Order*'s unbundling requirements and limitations that are not self-effectuating. Thus, the FCC stated that "incumbent and competitive LECs [should] use section 252(b) as a default timetable for modification of interconnection agreements that are silent concerning change of law and/or transition timing." *TRO*, 18 FCC Rcd at 17405, ¶ 703.[3] Moreover, the FCC made clear that the timing set forth in § 252(b) applies "even in instances where a change of law provision exists." *Id.* at 17405, ¶ 704. As a result, the FCC noted that, in all such cases, "a state commission should be able to resolve a dispute over contract language at least within the nine-month timeframe envisioned for new contract arbitrations." *Id.* at 17406, ¶ 704.

Despite the clear terms of the FCC's order, the Coalition argues that the Commission should first hold this proceeding in abeyance for 60 days, then require the parties to negotiate for an additional 90 days, and only then undertake a proceeding to decide the open issues presented by Verizon's petition. *See* Coalition Answer at 6-7. Such a course of action would not comply with the timetables set forth in Section 252, which require that a petition for arbitration be resolved within nine months of a request for negotiations.

More fundamentally, the Coalition's effort to delay the implementation of the requirements of the *Triennial Review Order* is directly contrary to the FCC's explicit determination that the new unbundling requirements — and particularly the newly enacted *limitations* on unbundling — must be implemented promptly. Indeed, the FCC held "that delay in the implementation of the new rules we adopt in this Order will have an adverse impact on

[3] As the FCC stated, "under the section 252(b) timetable, where a negotiated agreement cannot be reached, parties would submit their requests for state arbitration as soon as 135 days after the effective date of this Order but no longer than 160 days after this Order becomes effective." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 703. The *Triennial Review Order* became effective on October 2, 2003; Verizon filed its petition within the 135-160 day window on February 20, 2004.

investment and sustainable competition in the telecommunications industry." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 703. The proceeding that Verizon has initiated is of critical importance to the realization of the federal act's pro-competitive purposes. Given this Commission's strong endorsement of those pro-competitive goals, this proceeding should be of the highest priority.[4]

The supposed justifications for delay that the Coalition offers are without substance. First, to the extent Coalition suggests that the proceeding should be postponed to allow Verizon to modify its proposed amendment to incorporate any appropriate modification to reflect the court's decision in *USTA II*, the Coalition ignores the fact that Verizon had *already* informed the Commission that it intended to file a revised amendment, which it did on March 19, 2004. Second, the Coalition ignores the fact that *USTA II* affirmed the unbundling relief reflected in Verizon's draft amendment (and which also affirmed other new rules, such as the FCC's routine network modification rules, as reflected in Verizon's draft amendment). No party challenged the FCC's *Triennial Review Order* implementation rules before the D.C. Circuit, nor is there any hint in the *USTA II* ruling that the statutory arbitration window was somehow being "reset." *See generally USTA II.*

Second, to the extent that the Coalition suggests that more time is required to allow further negotiations between the parties, the simple fact is that the Coalition had ample opportunity to engage in negotiations after Verizon proposed its amendment on October 2, 2003,

[4] By the same token, the Commission cannot and should not entertain the Coalition's request for an order preserving any supposed "status quo" during the period of delay that the Coalition seeks to create. As the FCC has explained, the status quo prior to the adoption of the *Triennial Review Order* was that ILECs had no unbundling obligations at all — the D.C. Circuit had vacated the FCC's prior unbundling rules in *USTA I*. *See Triennial Review Order*, 18 FCC Rcd at 17406, ¶ 705. Verizon cannot be forced to continue to provide access to UNEs when there is no valid legal basis for such an obligation.

and essentially wasted that opportunity. Although some members of the Coalition sent a response to Verizon's proposal, they did so only shortly before the opening of the arbitration window; moreover, their proposals did not appear to represent a serious attempt to reflect the requirements of federal law. (Indeed, for that reason Verizon rejected them, as the Coalition acknowledges.) While the parties may well be able to narrow the issues that the Commission is ultimately called upon to resolve, the Coalition's failure to negotiate seriously and its obstructionist response to Verizon's petition both demonstrate that the time is ripe for the Commission to resolve the disputed issues presented by Verizon's petition.[5]

II. THE COMMISSION SHOULD NOT EXPAND THE SCOPE OF THIS PROCEEDING

The Coalition also proposes that scope of this proceeding be expanded to encompass two ill-defined issues. First, it proposes that the Commission address Verizon's supposed obligation to provide access to unbundled network elements under section 271. Second, it proposes that the Commission address matter of state law, without indicating what those matters might entail. Both proposals are transparent attempts to bog down this proceeding.

The proceeding that Verizon has initiated should be straightforward and relatively narrow in scope. Under its interconnection agreements, as a result of unlawful and now-superseded requirements of previous FCC orders, Verizon has been required to provide access to certain unbundled network elements that the FCC has determined must not be subject to mandatory unbundling. Under the *Triennial Review Order*, many unlawful unbundling obligations have

[5] Although the Coalition suggests that some of its agreements may contain change of law provisions that require different procedures, it does not in fact identify any such agreement. In any event, even if the Coalition had done so, its argument would still be inconsistent with (and trumped by) the FCC's ruling. As explained above, the FCC not only mandated the § 252(b) timetable for those interconnection agreements without any change-of-law provision, it also made clear that the § 252(b) timetable applies "in instances where a change of law provision exists." *Triennial Review Order*, 18 FCC Rcd at 17405, ¶ 704.

been eliminated, and the FCC established a specific timetable for amendment of agreements. Verizon has proposed provisions that reflect the new rules. The parties may dispute the precise contours of the new law, but as to the requirement that the new law be implemented there can be no legitimate dispute. That is, and should remain, the purpose of this proceeding

The Coalition suggests that other issues should be addressed in this proceeding, but its proposal is procedurally improper and substantively inappropriate as well. The Coalition has not filed any petition properly invoking this Commission's jurisdiction pursuant to this Commission's rules. The Coalition cannot hijack a proceeding that Verizon has properly initiated.

Moreover, although the Coalition refers to the need to implement obligations under section 271, even the Coalition acknowledges that these requirements only apply to Bell Operating Companies and Verizon South Inc. is not a Bell Operating Company. Section 271 does not apply to Verizon South Inc. at all. Moreover, even if the requirements of section 271 had any conceivable relevance here — and they do not — those obligations are purely a function of a federal statute and are not subject to implementation by state commissions acting pursuant to section 252.

The Coalition's suggestion that any requirements of state law are relevant to this proceeding is likewise incorrect. The FCC made crystal clear that the restrictions on unbundling enacted in the *Triennial Review Order* preempt any inconsistent requirements of state law (even if the Coalition had identified any such provisions — which it has not done). As the FCC held, "[i]f a decision pursuant to state law were to require the unbundling of a network element for which the Commission has either found no impairment — and thus has found that unbundling that element would conflict with the limits in section 251(d)(2) — or otherwise declined to

require unbundling on a national basis, we believe it unlikely that such decision would fail to conflict with and "substantially prevent" implementation of the federal regime, in violation of section 251(d)(3)(C)." Verizon's petition reflects the binding requirements of federal law; nothing in state law can prevent or alter their implementation.

CONCLUSION

The Commission should reject the Coalition's procedural motions and establish a procedural schedule for prompt resolution of Verizon's petition.

Respectfully submitted,

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